

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

STACIE SMITH,)
)
Plaintiff,)
)
v.) CIVIL ACTION NO.
) 2:08-CV-00125-MHT-WC
LIFEPOINT HOSPITALS, INC.,)
D/B/A ANDALUSIA REGIONAL)
HOSPITAL,)
)
Defendant.)

MOTION TO DISMISS

Comes now Defendant, improperly identified in Plaintiff's Complaint as LifePoint Hospitals, Inc., d/b/a Andalusia Regional Hospital, ("Lifepoint"), pursuant to 28 U.S.C. §1332 and Federal Rules of Civil Procedure, and requests the Court dismiss the Plaintiff's Complaint, without prejudice, on the following basis:

1. The Plaintiff's Complaint fails to state a claim upon which relief can be granted against this incorrectly named, non-existent Defendant.
2. This Court lacks subject matter jurisdiction.
3. This Court lacks diversity jurisdiction.
4. This Defendant, even if it existed, denies any wrongdoing which proximately contributed or caused the alleged injury or damages to the Plaintiff.
5. This Defendant, even if it existed, denies any causal connection with any

5. This Defendant, even if it existed, denies any causal connection with any of the alleged damage to the Plaintiff.

6. This Defendant, even if it existed, pleads lack of personal jurisdiction.

7. The Plaintiff has failed to join a necessary, indispensable party, Community Hospital of Andalusia, Inc., d/b/a Andalusia Regional Hospital, the owner and operator of the subject hospital, whose addition to the case would destroy diversity amongst the parties and this Court's original jurisdiction pursuant to 28 U.S.C. §1332.

8. Defendant specifically adopts and incorporates its contemporaneously filed Memorandum Brief in Support of Motion to Dismiss, including all exhibits attached thereto, as if fully set out herein.

WHEREFORE, PREMISES CONSIDERED, Defendant, incorrectly named as Lifepoint Hospitals, Inc., d/b/a Andalusia Regional Hospital, respectfully requests this Court enter an Order granting the present Motion to Dismiss in accordance with 28 U.S.C. §1332 and the Federal Rules of Civil Procedure 12(b)(1), 12(b)(7) and 19, without prejudice, and with leave for Plaintiff to refile in State Court against properly named corporate entities and/or individuals.

s/Walter J. Price, III
Walter J. Price, III
Attorney for said Defendant
HUIE, FERNAMBUCQ & STEWART,LLP
Three Protective Center
Suite 200
2801 Highway 280 South
Birmingham, Alabama 35223
Phone: (205)251-1193
Fax: (205)251-1256
Email: WJP@hfsllp.com
ASB-0127-c66w

CERTIFICATE OF SERVICE

I hereby certify that on the 24 day of March 2008, I electronically filed the foregoing with the Clerk of the Court using E-File system which will send notification of such filing to the following attorneys and mailing the document via U. S. Mail to the attorneys who are non-participants to the E-File system:

Max Cassady, Esquire
Utopia Cassady, Esquire
CASSADY & CASSADY, P.C.
14 South Section Street
Fairhope, AL 36401

s/Walter J. Price, III
OF COUNSEL